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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/744,034	04/27/2001	John C. Docherty	207501	3011

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EXAMINER	
ROBINSON, DANIEL LEON	
ART UNIT	**PAPER NUMBER**
3742	

DATE MAILED: 09/23/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	09/744,034	DOCHERTY ET AL.
	Examiner	Art Unit
	Daniel I. Robinson	3742

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *28 May 2004*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-5 and 8-53* is/are pending in the application.

4a) Of the above claim(s) *17-52* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-5, 8-16, and 53* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

Response to Amendment

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

Claims 1, 10, and 11 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by Flower(U.S.Pat.6,351,663)

The applied reference has a common inventor, Robert W. Flower, with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 102(e) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not the invention "by another," or by an appropriate showing under 37 CFR 1.131.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 2-5, 8, 9 and 53 are rejected under 35 U.S.C. 103(a) as being unpatentable over Flower in view of Collen (U.S.Pat.5,951,980). Flower discloses a method and diagnosis and treating conditions associated with abnormal vasculature using a fluorescent dye angiography and dye-enhanced photocoagulation that shows many of the features of the claimed invention but fails to show explicitly a given blood vessel and a bypass graft as being used on that particular vessel. Collen discloses an identification production and use of new staphlokinase derivatives with reduced immunogenicity that shows a coronary artery bypass grafting on a beating heart whereby an angiographic image is obtained before and after the invasive procedure. It would have been obvious to one of ordinary skill in the art at the time of the claimed invention to use a bypass graft on a beating heart and to image before and after the procedure because a bypass graft provide an alternate route for blood flow caused by a beating heart and the angiographic images taken before nad after the procedure show if the procedure will be successful.

Claims 12 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Flower in view of Feiler(U.S.Pat.5,375,603). Flower does not explicitly show a plurality of images obtained and the use of a video monitor. Feiler discloses a method of performing heart surgery

using thermographic imaging that shows explicitly obtaining a plurality of images. It would have been obvious to one of ordinary skill in the art at the time of the claimed invention to use a plurality of images because by comparing images on the two monitors the surgeon can detect changing blood flow patterns.

Claims 14 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Flower in view of Feiler as applied to claims 12 and 13 above, and further in view of Alfano(U.S.Pat.6,280,386). Flower in view of Feiler does not explicitly show using a CCD camera to obtain an image. Alfano discloses an apparatus for enhancing the visibility of a luminous object inside tissue that shows using CCD camera. IT would be obvious to one of ordinary skill in the art at the time of the claimed invention to use a CCD camera so as to interface with a computer.

Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Flower in view of Feiler and Alfano as applied to claims 14 and 15 above, and further in view of Berst et al.(U.S.Pat.5,927,284). Flower in view of Feiler and Alfano does not show an endoscope used in part to obtain an image. Borst discloses a method and apparatus for temporarily immobilizing a local area of tissue that shows explicitly using an endoscope. It would have been obvious to one of ordinary skill in the art at the time of the claimed invention to use an endoscope to see into the interior of a body.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Inaba, Pratt, Benaron, Keogh, an Alfheim are cited to show structure similar to the claimed invention.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Daniel l. Robinson whose telephone number is 703 306-9043. The examiner can normally be reached on M-F 5:30am-2:30pm.

The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

dlr

DANIEL ROBINSON
PATENT EXAMINER